Single Bench

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

CHHATTISGARH

M.C.C. NO. 104 OF 2004

APPLICANT : Brij Mohan Lal, S/O Prabhati Lal, Aged about 52 years, M/S Goyal Saw Mills, Station Road, Durg (C.G.).

P. R. No. 1890/04 Presented by Shri B. D. Goyal Advocate 17-8-04

Versus

NON-APPLICANT : Smt. Daljit Kaur, W/O Ranbir Singh Chhane, Aged about 53 years, R/O Malviya Nagar, Durg (C.G.).

APPLICATION FOR RESTORATION OF

FIRST APPEAL NO. 369/1994.

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक MCC 104/04 सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

23-6-2006

Shri H.S. Patel, counsel for the applicant.

Shri V.G. Tamaskar, counsel for the non-applicant.

Heard on M.C.P. No.1215/2004 for condonation of delay in filing M.C.C.

Learned counsel for the applicant submits that on 22/6/2004 the applicant received the information of the order dated 17/12/2003 passed by this Court in F.A. No.369/1994 and he applied for certified copy of the order on 25/6/2004 and that is how the delay has occurred, which is not mala fide but due to bona fide mistake of the counsel.

Learned counsel for the non-applicant opposed the prayer.

Having considered the facts and circumstances and the material on record, the delay is condoned subject to costs of Rs.500/- payable to the respondent. The payment be made or deposited in the CCD.

M.C.P. No.1215/2004 stands disposed of.

Heard.

The present MCC has been filed by the applicant/appellant for restoration of First Appeal No.369/1994.

During the pendency of the first appeal, an application under Section 13 of the M.P. Accommodation Control Act was made for dismissal of the appeal on the ground of non-compliance and non-deposit of the amount. This application was heard on 16-7-2002 and the order was passed by this Court that the appeal cannot be dismissed and it has to be heard in accordance with law. Against this order, an LPA was filed. An order was passed in the LPA on 24-11-2003, which reads as under:

(पीछे देखिये)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ...MCC 104/04... **सन्** **200**

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

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"24/11/2003

Shri V.G. Tamaskar, counsel for the appellant.
Shri B.D. Guru, counsel for the respondent.
Heard.

Learned counsel for the appellant submits that since the learned Single Judge has held that the appeal filed by respondent has to be heard and decided on merits, the Single Judge may be directed to hear the appeal and dispose of the same at an early date.

In view of this submission, the appeal stands disposed of. The learned Single Judge would now hear all the parties and dispose of the appeal as early as possible."

After the passing of the order in LPA, the first appeal was listed on 17-12-2003 for hearing on I.A.No.5417/2002 for condonation of delay in depositing the amount. On that date, neither the counsel for the respondent nor the respondent was present and as such an order was passed that P.F. be paid within 7 days, failing which the appeal shall stand dismissed without reference to the Bench automatically.

Learned counsel for the non-applicant/respondent submits that though the copy of the application (I.A.No.5417/2002) was supplied to him on 29-10-2002, but this fact was not disclosed to the Court and as such an order was passed on 17-12-2003 to pay process fee. He further submits that the process fee admittedly was not paid and the appeal was dismissed under the default.

Shri Patel, learned counsel for the applicant/appellant contended that due to bona fide mistake he could not point out the aforesaid fact to this Court. He further contended that for his mistake the applicant/ appellant should not suffer. He prayed that the lapse on his part may be condoned.

(पीछे देखिये)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक MCC 104/06 सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	Respondent has filed the reply opposing the application for restoration. Shri Tamaskar, learned counsel for the non-applicant/respondent, submits that since the counsel for the applicant/ appellant has realized that the delay has been caused; he ought to have made every effort to get the First Appeal and MCC decided at the earliest and after obtaining certified copy it should have been filed promptly. The promptness was not shown by the applicant/appellant. Nevertheless, it is a settled law that a party should not suffer because of the mistake of counsel. Having considered the facts and circumstances of the case and the material on record, the present MCC is allowed and the First Appeal is restored to its original number. Consequently, all the pending applications stand disposed of. At this stage, both the counsel prayed that since the First Appeal is of the year 1994, it may be listed in the week commencing 3rd July, 2006. As prayed, the First Appeal be listed in the week commencing 3rd July, 2006. Certified copy as per rules. At this stage, counsel for both the parties pray that they may be allowed to communicate the order to the parties. Counsel for the parties may communicate the order. Hl/- Sd/- Fakhruddin Judge	

(पीछे देखिये)